



April 30, 1999

Mr. Thomas G. Ricks
President
University of Texas Investment Management Company
210 West Sixth Street, 2nd Floor
Austin, Texas 78701

OR99-1189

Dear Mr. Ricks

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123691.

The University of Texas Investment Management Company ("UTIMCO") received a request from Stephen N. Lisson for "Vinson & Elkins' (plus any other public or private attorney's) records and files on me, INITIATE!! and their 'Lisson/INITIATE!! TORA Request File' or files; include any other related documents and information." You state that UTIMCO has made available to Mr. Lisson all of the requested information except two legal memoranda and a draft document. You claim that these three documents are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the documents at issue.

In Open Records Letter No. 98-1208 (1999), this office ruled that UTIMCO must release the information requested from it, consisting of "all memoranda, diaries, correspondence, writings, documents, journals, notes, personnel notes, phone logs, e-mails and any other information in whatever form concerning, involving, mentioning or relating to either Initiate!! and/or Steve Lisson." In response to your request for reconsideration of Open Records Letter No. 98-1208, this office affirmed the ruling. Open Records Letter No. 99-0669 (1999). The two legal memoranda at issue here are dated April 2, 1998 and April 6, 1998. Both of these memoranda were created prior to the request for information which gave rise to Open Records Letter No. 98-1208, and both memoranda are responsive to that request. UTIMCO should have already released these memoranda to the requestor in accordance with Open Records Letter Nos. 98-1208 and 99-0669. Gov't Code

§§ 552.221, .353(b)(3). Therefore, UTIMCO must immediately release the memoranda to Mr. Lisson.

The other document at issue is a draft document prepared by an attorney that is not dated. Therefore, we cannot determine whether this draft was created prior to the request for information which gave rise to Open Records Letter No. 98-1208. The draft is responsive to the prior request, and therefore, must be released if it existed when UTIMCO received the prior request. Open Records Decision Nos. 476 (1986), 452 (1987) (act does not require governmental body to treat request for information as embracing information prepared after the request was made or to inform requestor subsequently when the information does come into existence).

On the other hand, if the draft was created after UTIMCO received the prior request, you may withhold the draft from disclosure pursuant to section 552.107 of the Government Code. Open Records Decision Nos. 476 (1986), 452 (1987) (act does not require governmental body to treat request for information as embracing information prepared after the request was made or to inform requestor subsequently when the information does come into existence). Section 552.107(1) protects information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects the client's confidential communications to the attorney or the attorney's legal advice or opinions. ORD 574 at 5-7. Section 552.107(1) does not protect purely factual information. *Id.* The submitted draft consists entirely of an attorney's legal advice to UTIMCO. Therefore, if the draft was created subsequent to the request for information which gave rise to Open Records Letter No. 98-1208, UTIMCO may withhold the draft from disclosure pursuant to section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hattaway". The signature is written in black ink and is positioned above the printed name and title.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH\ch

Ref: ID# 123691

encl: Submitted documents

cc: Mr. Stephen N. Lisson
Initiate!!
P.O. Box 2013
Austin, Texas 78768-2013
(w/o enclosures)